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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/803,441	03/18/2004	Marc Leibowitz	48756/6	5425
1912	7590	05/16/2006	EXAMINER	
AMSTER, ROTHSTEIN & EBENSTEIN LLP 90 PARK AVENUE NEW YORK, NY 10016			HYLTON, ROBIN ANNETTE	
			ART UNIT	PAPER NUMBER
			3727	

DATE MAILED: 05/16/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/803,441

Applicant(s)

LEIBOWITZ, MARC

Examiner

Robin A. Hylton

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 February 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

1. The indicated allowability of claims 4-6 and 8 is withdrawn in view of the newly discovered reference(s) to Rose, Brown, Sr., and DeBoer et al. Rejections based on the newly cited reference(s) follow.

Claim Rejections - 35 USC § 103

2. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

3. Claims 1-4 and 6-8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Snyder (US 5,423,451) in view of Brown, Sr. (US Des. 277,826) and DeBoer et al (US 6,814,090).

The provisions of 35 USC 112, 6th paragraph are not invoked by the use of "means".

Snyder teaches a plastic food storage container **11A** having an open top, a plastic cover unit including a cover **22** configured and dimensions to close the open top and a food cutting board **17**. The cover can be used in the position shown in figure 7 or inverted to cover the container opening. Snyder does not teach releasably securing the cutting board to the cover nor the cover having inwardly extending lips for securing the cutting board thereto.

Brown teaches it is known to provide a cover with inwardly extending lips for releasably securing an insert to the cover.

DeBoer teaches it is known to provide a cutting board **70** releasably secured to a cover **32**, and that the securing mechanism can be any known in the art.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to apply the teaching of inwardly extending lips to the peripheral portion **28** of the cover of Snyder. Doing so provides an arrangement whereby the cover and cutting board can be moved together with the cover in any orientation:

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The spout means extending to a location remotely spaced from the cover is represented by portion **25**.

Regarding the cutting board being of a harder material than the cover and the container, column 4, lines 20-22 indicate the cutting board must be of a material suitable for use with a sharp knife. The disclosure does not indicate the material of the cover or container must be suitable for use with a sharp knife. It is, thus, inherent that the material of the cutting board is harder than the cover and container.

Wherein it is argued the material of the cutting board is not inherently harder than the cover and container, it would have been obvious to one having ordinary skill in the art at the time the invention was made to form the cutting board of a plastic material harder than the cover and container so as to be resistant to damage from use with a sharp knife, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice.

4. Claims 1,3 and 5-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rose (US 4,305,166) in view of DeBoer.

Rose teaches a food storage container **16** and cover unit **10** including a cover and a cutting board **28**, the cover having two useful positions (col. 2, lines 24-27). Rose does not disclose releasably securing the cutting board to the cover, only that any fastener means can be employed.

Wherein other arrangements can be used, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use inwardly extending lips on the cover and/or corresponding recesses on the cutting board since the examiner takes Official Notice of the equivalence of ribs and grooves on planar surfaces and radially extending lips on a

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cover for their use in the container art and the selection of any of these known equivalents to secure a releasable article to a cover would be within the level of ordinary skill in the art.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide a releasable engagement between the cutting board and the cover. Doing so allows for easier and more efficient cleaning of the cutting board and cover.

DeBoer teaches it is known to provide a cutting board 70 releasably secured to a cover 32 by a securing mechanism known in the art and the cutting board can be plastic, wood or other suitable material suitable for use with a sharp knife. Thus, it is inherent that the material of the cutting board is harder than the cover and container.

Wherein it is argued the material of the cutting board is not inherently harder than the cover and container, it would have been obvious to one having ordinary skill in the art at the time the invention was made to form the cutting board of a plastic material harder than the cover and container so as to be resistant to damage from use with a sharp knife, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to form the cutting board of Rose of a hard plastic material. Doing so provides a cutting board which can be cleaned and sanitized more safely and easily than a cutting board of wood.

Conclusion

5. Applicant is duly reminded that a complete response must satisfy the requirements of 37 C.F.R. 1.111, including: "The reply must present arguments pointing out the specific distinctions believed to render the claims, including any newly presented claims, patentable over any applied references. A general allegation that the claims "define a patentable invention" without specifically pointing out how the language of the claims patentably distinguishes them from the

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references does not comply with the requirements of this section. Moreover, "The prompt development of a clear Issue requires that the replies of the applicant meet the objections to and rejections of the claims." Applicant should also specifically point out the support for any amendments made to the disclosure. See MPEP 2163.06 II(A), MPEP 2163.06 and MPEP 714.02. The "disclosure" includes the claims, the specification and the drawings.

6. This Office action is made non-final in view of the new grounds of rejection based upon the newly found references.

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Various prior art disclosures teaching features similar to those disclosed and/or claimed are cited for their disclosures.

8. In order to reduce pendency and avoid potential delays, Group 3720 is encouraging FAXing of responses to Office Actions directly into the Group at (571) 273-8300. This practice may be used for filing papers not requiring a fee. It may also be used for filing papers which require a fee by applicants who authorize charges to a PTO deposit account. Please identify the examiner and art unit at the top of your cover sheet. Papers submitted via FAX into Group 3720 will be promptly forwarded to the examiner.

9. It is called to applicant's attention that if a communication is faxed before the reply time has expired, applicant may submit the reply with a "Certificate of Facsimile" which merely asserts that the reply is being faxed on a given date. So faxed, before the period for reply has expired, the reply may be considered timely. A suggested format for a certificate follows:

I hereby certify that this correspondence for Application Serial No. _____ is being facsimiled to The U.S. Patent and Trademark Office via fax number 571-273-8300 on the date shown below:

Typed or printed name of person signing this certificate

Signature _____

Date _____

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10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robin Hylton whose telephone number is (571) 272-4540. The examiner can normally be reached Monday - Friday from 9:00 a.m. to 4:00 p.m. (Eastern time).


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse, can be reached on (571) 272-4544.

Any inquiry of a general nature or relating to the status of this application or proceeding may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Other helpful telephone numbers are listed for applicant's benefit:

- Allowed Files & Publication (888) 786-0101
- Assignment Branch (800) 972-6382
- Certificates of Correction (703) 305-8309
- Fee Questions (571) 272-6400
- Inventor Assistance Center (800) PTO-9199
- Petitions/special Programs (571) 272-3282
- Information Help line 1-800-786-9199
- Internet PTO-Home Page <http://www.uspto.gov>

RAH
May 9, 2006



Robin A. Hylton
Primary Examiner
GAU 3727